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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JACK UVON MANSKER, Defendant and Appellant.	E052272 (Super.Ct.No. SWF028224) **OPINION**

APPEAL from the Superior Court of Riverside County. Richard J. Hanscom, Judge. (Retired judge of the San Diego Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Mark Alan Hart, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and James D. Dutton and Alana C. Butler, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jack Uvon Mansker repeatedly molested his stepgranddaughter Jane Doe from the time she was nine years old until she was 14 years old. Doe eventually told her stepmother about the molestations when she thought that she might be pregnant. Defendant was found guilty of two counts of rape, one count of oral copulation, and three counts of lewd and lascivious acts, all with a minor under the age of 14.

Defendant now claims on appeal that the trial court erred by refusing to unseal juror identifying information pursuant to Code of Civil Procedure sections 206 and 237 for the purpose of investigating a claim of juror misconduct.

I

PROCEDURAL BACKGROUND

Defendant was found guilty by a Riverside County Superior Court jury of two counts of rape of a minor under the age of 14 (Penal Code, § 269, subd. (a)(1)),[1] oral copulation of a minor under the age of 14 by use of force, duress or fear (§ 269, subd. (a)(4)), and three counts of a lewd act upon a minor under the age of 14 with the use of force, duress or fear (§ 288, subd. (b)(1)).

Defendant was sentenced to three consecutive sentences of15 years to life on the two rape convictions and the oral copulation conviction, for a total of 45 years to life. On the three lewd and lascivious acts convictions, he received three 6-year consecutive

[1] All further statutory references are to the Penal Code unless otherwise indicated.

sentences, for a total of 18 years. Defendant received a total sentence of the indeterminate term of 45 years to life, plus a determinate term of 18 years.

II

FACTUAL BACKGROUND

A. *Prosecution.*

In September 2010, on the day the trial started, Jane Doe turned 15 years old. Doe's grandmother, Sue, was married to defendant. From the time Doe was a little girl, Sue and defendant lived close to Doe, and they would babysit her after she got out of school. Sue and defendant also watched Doe's stepsister and three of Doe's cousins. Doe lived with her father and stepmother, Rhonda, whom her father had married when she was one year old.

When Doe was nine years old, and no one else was home, defendant unzipped his pants and showed his penis to her. Defendant asked her to touch him, and she told him no. Doe felt awkward after the incident and thought it was her fault that defendant had targeted her. Defendant told Doe that he was the only one who loved her and that Rhonda loved her sister more than her. He told her she was skinny and pretty.

Sometime after this incident, while she was between nine and 14 years old, she was helping defendant build Sue a shed on their property. Defendant locked the door to the shed by using a wire. While in the shed, defendant pulled down her pants and then pulled down his own pants. He then rubbed his penis against her vagina. Doe did not tell

him no because she was afraid if she pushed him away he would hurt her. At the same time, she also felt that she had a special relationship with defendant and that he loved her.

Defendant repeated the molestations during the year the shed was being built. During this time, defendant rubbed his penis on her vagina, put his hand on her chest, kissed her on the check and mouth, and put his mouth on her chest. Defendant committed these acts at least five times. At some point, defendant ejaculated while committing these acts, but Doe could not recall when.

On another occasion, Doe was sitting on the sink in the bathroom at defendant's home. Sue was home at the time. Defendant locked the door to the bathroom. He then pulled down Doe's pants and put his mouth on her vagina. Defendant told Doe not to tell anyone. He told Doe that if she told Sue, Sue would be mad at her.

During the summer of 2008, defendant and Sue had a tent set up in their backyard. One night, defendant, Doe, and the other children slept in the tent and pretended they were camping. Doe stayed in the tent because she did not want defendant to do anything to the younger children. Defendant and Doe slept in one part of the tent and the children in another.

While the other children were sleeping, defendant put his penis inside Doe's vagina. It hurt Doe at first. Defendant did not wear a condom. Defendant then took his penis out of her vagina and put on a condom. He then rubbed his penis on her with the condom on.

In January 2009, when Doe was 13 years old, she began menstruating. Doe told defendant, but he told her nothing would happen. Defendant had sexual intercourse with Doe a second time after she reached menses.

After this second time, Doe did not menstruate for several months. She was afraid that she was pregnant, so she finally told Rhonda what defendant had been doing to her. Rhonda got Doe a pregnancy test, which was negative. Rhonda told Doe that what defendant had done to her was not her fault. Rhonda called the police.

Doe admitted she was upset that defendant had broken his promise to teach her how to drive. She did not recall that she was told she could not live with defendant and Sue. Doe was afraid defendant would hit her if she said no, because she had seen him hit her cousins. Doe admitted that she thought Rhonda treated her stepsister better and had told Sue and defendant she thought this; they agreed with her that Rhonda treated her stepsister better. Rhonda admitted that she and Doe had a strained relationship due to the jealousy between her own daughter and Doe.

Sue had been married to defendant for 32 years. She confirmed that from the time Doe was nine years old until she was 14 years old, she spent a lot of time with Sue and defendant at their home. Sue had heard defendant tell Doe that Rhonda cared more about her stepsister than about her. Sue had observed defendant hit Doe's three cousins with a board.

Sue found out that defendant had been molesting Doe when he was arrested. She had noticed before this that Doe seemed to be a "little too close" to defendant. After

defendant was arrested, Sue went through defendant's personal belongings. She found lubricated condoms hidden under his clothes in one of his drawers. She was "[d]evastated" when she found them; she and defendant did not use condoms because she had had a hysterectomy. Although she had been suffering from vaginal dryness (which had affected her sex life with defendant for the previous five years), they had never used a lubricated condom. There was one condom missing from the package she found.

Riverside County Sheriff's Department Detective Joseph Greco worked in the sex crimes division. Detective Greco came to Doe's house and asked her questions about what had happened with defendant. Detective Greco set up a pretext telephone call between defendant and Doe that was recorded. According to that conversation, Doe said to defendant, "Umm, I just wanted to tell you that, remember the last time we had sex?" Defendant answered, "Yep." She then said, "Umm, ahh, and where you didn't wear a condom?" Defendant responded, "What are you talking about . . . ?" Doe then responded, "I'm trying to tell you that I'm pregnant." Defendant then said, "How the hell can you be pregnant?" Doe responded that it was because he did not wear a condom. Defendant then asked her where she was, and she responded she was at school and using a cellular telephone that belonged to one of her friends. When Doe asked defendant what she should do, he replied, "I don't know, honey, I, I really don't. Ahhh. Ahhh. Wait 'til I pick you up . . . this afternoon, okay?"

Dr. Veronica Thomas was a clinical psychologist. A portion of her practice was dedicated to working with victims of sexual abuse. She had worked with child victims in

the past. Dr. Thomas explained that child sexual abuse accommodation syndrome (CSAAS) was a compilation of a variety of characteristics of children who are molested by their fathers or a person close to him or her. It consisted of five components, including secrecy, helplessness, entrapment and accommodation, disclosure, and then recantation after disclosure.

Dr. Thomas explained that if the abuse of the victim occurs over a long period of time, the victim might not have complete recollection of the specific instances of abuse. It is not uncommon for the child victim to grow up to feel guilty and responsible for the sexual abuse. It is also possible that the child feels a bond with the molester. Dr. Thomas had not interviewed defendant or Doe in connection with this case. She could not say that Doe was suffering from CSAAS.

B. *Defense*

Several of defendant's family members—B.T., defendant's sister; Brenda's daughter, A.R.; defendant's sisters, S.P. and G.J.; and G.J.'s husband, M.J.—testified they had observed defendant over the years interact with children and had not observed any inappropriate behavior. Donald Bonthron had worked with defendant for a number of years. Bonthron had never observed defendant act inappropriately with his children or other children.

Defendant testified on his own behalf; he was 67 years old at the time of trial. He had been in a car accident in 1992 and had hurt his back. He had two rods in his lower back. Defendant denied that he hit any of Doe's cousins with a board. Defendant felt

that his and Doe's relationship had been fine as she grew up. Doe was treated badly by Rhonda. Defendant was always trying to encourage Doe and tell her she was pretty in order to make her feel better about herself.

Defendant claimed that Doe was upset with him just prior to his arrest because he refused to teach her how to drive. In the five years prior to his arrest, defendant and Sue had stopped having sexual relations because she suffered from vaginal dryness. Defendant bought the box of lubricated condoms to try with Sue. Defendant never told Sue about buying them and hid them in his drawer so the children would not find them. Defendant claimed that he had tried on one of the condoms by himself since he had not used one in 30 years.

Defendant denied that he turned to Doe for sexual relations. He denied all the accusations made by Doe. Defendant got the pretext telephone call from Doe while he was shopping at a store. Defendant claimed that he responded yes when Doe asked him if he remembered the last time that they had sex because he was busy and had a habit of just saying yes or no when asked a question when he is busy. It did not register to him that Doe was saying they had sex. Defendant did not immediately deny the accusations because he was in shock that his 13-year-old stepgranddaughter could be pregnant; he did not think she was sexually active. Defendant claimed he also wanted to wait and discuss the issue with Sue present. He claimed he was aware that law enforcement officials might have been involved in the telephone call.

III

PETITION TO RELEASE JUROR IDENTIFYING INFORMATION

Defendant contends the trial court abused its discretion by refusing to release juror identifying information for the purpose of investigating a claim of juror misconduct.

A. *Additional Factual Background*

Defendant brought a petition to release juror identifying information under Code of Civil Procedure sections 206 and 237, subdivision (b). According to the motion, one of the jurors spoke with Sue and other extended family members about Doe during the trial. Also, another juror was seen participating in one of the conversations. Although it was unknown if the discussion involved the facts of the case, it gave the "appearance of impropriety." Defendant asked that the personal identifying information for two of the jurors—identified as Juror Nos. 11 and 12—be released.

In support of the motion, defendant presented four declarations from his own family members. Mario was defendant's brother-in-law and testified at trial. Prior to closing argument, Mario was sitting in the hallway with defendant's brother, Charles; his sister, Barbara; a relative by marriage, Gary, and two other persons and observed Sue talking to a man in the hallway outside the courtroom. The man was sitting on a ledge looking up at Sue. Mario did not see the man say anything. Mario did not hear the conversation and only witnessed it for a few seconds. When they entered the courtroom, Mario realized the man was one of the jurors: he was seated in the bottom row closest to

the audience. Mario was 85 to 90 percent certain that the juror was the same man he saw Sue talking to in the hallway.

While the defense case was in progress, Barbara was seated outside of the courtroom with Charles and Gary waiting for the trial to start. She observed two jurors talking to three members of Doe's family (Sue's brother, Doe's stepgrandmother, and Sue's granddaughter) who were not witnesses in the trial. The conversation lasted for 30 minutes. She did not hear the conversation. The jury was then called into the courtroom. She noted that the jurors were seated in either the middle or bottom row and their seats were next to each other. She described the two men as Caucasian and both in their fifties. One of the men had blonde hair with grey in it, and the other man had dark hair.

Gary was present on the day the defense was presented. He was standing in the hallway with Barbara and Charles. Barbara pointed out to him that it looked like Sue's brother was talking to one of the jurors. The hallway was crowded and jurors from both nearby courtrooms were in the hallway, but Gary observed the two men talking to each other; Gary did not know Sue's brother. He could not hear the conversation, but it lasted for a few minutes. When the jurors were seated and defendant's trial resumed, Gary recognized one of the men he had seen talking in the hallway in either the middle row or the bottom row of the jury box. The other man was seated in the back of the courtroom and was described as Caucasian, heavy, and balding.

The following day, in Gary's presence, Mario pointed out one of the jurors to defense counsel and told him that he had seen him talking to Sue the day before. Gary

stated that it was the same juror that he had seen talking outside to the person identified as Sue's brother. He apparently did not disclose to defense counsel what he had observed. Gary described him as Caucasian with glasses, a think face, and light brown hair. It was the same man seen speaking with Sue in the hallway.

Defendant's brother, Charles, attended the trial on three days and observed a man talking to members of Doe's family. On the first day, he observed Sue, Sue's brother, and Doe's stepgrandmother talking to a man in the hallway for 5 to 10 minutes. When they went into the courtroom, Charles saw the man seated in the jury box, but he could not recall the juror's location in the jury box.

On the second occasion, he observed the same man talking to Sue's brother and Doe's stepgrandmother in the hallway. They spoke for about 5 to 10 minutes. On the third day, the same man was talking to Sue's brother and Doe's stepgrandmother in the hallway for approximately 10 to 15 minutes prior to the trial. Charles could not hear any of the conversations. He did indicate that on the last occasion, the juror was seated in the bottom row in the first chair.

Charles was with Gary, Barbara, and G.J. when he made these observations. They decided to tell defense counsel what they had witnessed. They told defense counsel only about this interaction. Charles described the juror as being bald on top with hair around the edges.

Defense counsel presented his own declaration. He admitted he was approached by G.J. on the day of closing arguments and was told she had observed a juror—who

defense counsel believed was Juror No. 12—speaking to one of Doe's family members. Defense counsel believed it was an isolated incident and informed the prosecutor but did not pursue the matter. After defendant was convicted, he was advised by defendant's family members that the conversations with Doe's family members had actually occurred on three separate occasions and that one had involved Sue, who had been a prosecution witness. Defense counsel also attested that since they switched courtrooms during the trial, and each of the jury boxes was configured differently, defendant's family members could easily be confused as to the location of the juror in the jury box. It was defense counsel's belief, after reviewing the layout of the two jury boxes, that Juror No. 12 engaged in several conversations with family members, and Juror No. 11 was engaged in one conversation.

The trial court indicated it had read the motion and wanted to give the People time to respond. The trial court noted that the number of persons involved made it very confusing, and all of the parties were aligned to either Doe or defendant. The trial court took the disclosure of juror names very seriously and required a "strong showing." The motion was continued.

At the next hearing, the trial court had reviewed the opposition submitted by the People.[2] Defense counsel argued that it was clear from the declarations that Juror No. 12 was involved in conversations with Sue and other members of Doe's family, which gave

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[2] The People's opposition was apparently not filed and therefore is not part of the record.

rise to some impropriety. Defense counsel admitted that they might not have discussed the case, but disclosure of the names of the jurors was required in order to make sure. The only way to determine if they discussed the case was to disclose the jurors' names and addresses. The People countered that the inconsistencies in the declarations showed that there was no credible information that there was good cause to release the personal information due to juror misconduct.

Defense counsel noted there was confusion in the declarations because the trial was conducted in two separate courtrooms. The jury box configuration was different in each courtroom which led to some confusion as to which juror was involved in the conversations with Doe's family.

The trial court agreed that the configuration was different in the courtrooms and that it did not put much "stock" in the confusion about the location of the jurors from the declarations. It stated it had read the petition again and the cases cited therein. It was concerned that the release of information like this would have a chilling effect on jurors. It was possible that a potential juror could be concerned that they would be interrogated after the trial.

The trial court noted that the declarations essentially came down to the fact that one or two jurors were talking to family members of the victim. The only identified family member who testified was Sue. Sue's testimony at trial was neutral and short in the trial court's mind. The only substantive testimony was the condom. However, the declarations did not establish that Sue actually talked to the jurors or whether the jurors

were talking to someone else around them. Based on the size of the court and the hallway, it was impossible to keep family members and jurors separated. The trial court did not find a compelling reason to disclose the jurors' names.

The trial court ruled: "I really studied this, and I . . . do not see how the petition and the declarations include facts sufficient to establish good cause for the release of the jurors' personal identifying information. So I'm going to deny the request for release of the personal identifying information, and I'm not going to set the matter for hearing . . . because I don't find good cause."

B. *Analysis*

Upon the recording of a jury verdict in a criminal case, the court's record of the jurors' personal identifying information is to be sealed. (Code Civ. Proc., § 237, subd. (a)(2).) Any person may petition the court for disclosure of the identifying information, and the petition must be supported by a declaration establishing good cause for the disclosure. (*Id*., subd. (b); *Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1098, fn. 7; *People v. Granish* (1996) 41 Cal.App.4th 1117, 1131 [Fourth Dist., Div. Two].) Code of Civil Procedure section 237, subdivision (b), provides, in pertinent part: "The petition shall be supported by a declaration that includes facts sufficient to establish good cause for the release of the juror's personal identifying information. The court shall set the matter for hearing if the petition and supporting declaration establish a prima facie showing of good cause for the release of the personal juror identifying information . . . ."

Good cause, in the context of a petition for disclosure to support a motion for a new trial based on juror misconduct, requires "a sufficient showing to support a reasonable belief that jury misconduct occurred . . . ." (*People v. Rhodes* (1989) 212 Cal.App.3d 541, 552; accord, *People v. Wilson* (1996) 43 Cal.App.4th 839, 850-852.)[3] Good cause does not exist where the allegations of jury misconduct are speculative or unsupported. (See *Wilson*, at p. 852.)

"Denial of a petition filed pursuant to [Code of Civil Procedure] section 237 is reviewed under the deferential abuse of discretion standard." (*People v. Santos* (2007) 147 Cal.App.4th 965, 978; see also *People v. Jones* (1998) 17 Cal.4th 279, 317.)

Here, the sole reason given to the trial court for disclosing the names of Juror Nos. 11 and 12 was to determine what, if anything, was discussed with members of Doe's family. All of the declarations offered were from family members who supported defendant. They all provided evidence that it appeared that several of Doe's family members were observed in the hallway outside the courtroom interacting with Juror No. 12 on several occasions, and Juror No. 11 on one occasion. Not one declarant could hear the substance of the conversations. Only one of the family members, Sue, had testified at trial, and she was observed on only one occasion speaking with Juror No. 12.

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[3] Although Code of Civil Procedure section 206 was amended after *People v. Rhodes, supra*, 212 Cal.App.3d 541 was decided, our Supreme Court has expressly accepted that the 1992 amendment of that statute did not disturb the holding requiring good cause for disclosure. (*Townsel v. Superior Court, supra*, 20 Cal.4th at p. 1094, fn. 4.)

Initially, defendant speculates that Juror Nos. 11 and 12 were aware that the extended family members—Sue's brother, Doe's stepgrandmother and Sue's granddaughter—were even members of Doe's family. Moreover, it is mere speculation that the discussions involved the case. It is unknown whether these family members had any knowledge of the case outside what had been presented in the courtroom. As stated, good cause does not exist where the allegations of jury misconduct are speculative or unsupported. (See *People v. Wilson, supra,* 43 Cal.App.4th at p. 852.) Defendant asked the trial court to disclose these jurors' names in a highly sensitive sexual molestation case involving family members based on the mere speculation that Sue's brother, Doe's stepgrandmother, and Sue's granddaughter imparted some information to the two jurors that gives rise to juror misconduct.

Moreover, the refusal to disclose the name and address of Juror No. 12 in order to investigate the accusation that Sue had spoken with that juror was also not an abuse of the trial court's discretion. As above, the petition is based on pure speculation that the conversation involved anything about the case. As noted by the trial court, the jurors and witnesses were forced to mingle in the hallway. and Mario only saw the two engaged in a conversation for a "few seconds." Mario was only 85 to 90 percent sure the person that he observed talking to Sue was a juror.

Charles observed Juror No. 12 with Sue, Sue's brother, and Doe's stepgrandmother, but provided nothing about whether Sue was actually speaking to Juror No. 12. Moreover, he declared that Sue had not testified as yet in the trial. The trial

court questioned whether Sue even spoke to Juror No. 12. Hence, it is not entirely clear that Juror No. 12 was aware that Sue was a family member or potential witness or that he and Sue even had a conversation.

Defendant claims that Sue potentially disclosed to Juror No. 12 that he had molested other children, which was evidence not presented at trial. Sue testified at sentencing that it had come out in counseling that defendant had also molested Doe's cousins. Defendant insists that Sue "may" have disclosed this information to Juror No. 12. Such speculation does not support disclosing Juror No. 12's name. The trial court could, within its discretion, determine that this mere speculation did not constitute good cause to require disclosure. We will not disturb that finding.

Most importantly, the credibility of the declarations is questionable in that the conversations were witnessed throughout the trial by members of defendant's family. (See *People v. Granish, supra,* 41 Cal.App.4th at p. 1131 [declarations from only family members and friends of the defendant did not support releasing personal juror information].) There were numerous inconsistencies in the declarations. Charles described the man seen talking to Sue and her family on three separate occasions as bald on top with hair around the edges. Barbara described the jurors speaking with defendant's family members as two Caucasian men in their fifties, one with blonde hair and another with dark hair. Gary described the juror Barbara pointed out was talking to Sue's brother as wearing glasses and having light brown hair. These inconsistencies cannot be explained by the change in courtrooms. The declarations were clearly suspect.

Further, the family members did not disclose the conversations until after defendant was convicted. Certainly, if the conversations presented such a concern to defendant's family, the family members should have disclosed their observations while the trial was in progress. To suddenly disclose these observations after defendant's conviction makes the declarations suspect.

The trial court did not abuse its discretion by finding that the declarations presented did not present sufficient facts to establish good cause for releasing the names and addresses of Juror Nos. 11 and 12.

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

McKINSTER
Acting P.J.

MILLER
J.